

§ 748.9

15 CFR Ch. VII (1–1–02 Edition)

(p) Temporary exports or reexports.

(q) Exports of chemicals controlled for CW reasons by ECCN 1C350 to countries not listed in Supplement No. 2 to part 745 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 64 FR 27146, May 18, 1999]

§ 748.9 Support documents for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations and your item is not a firearms item destined for an OAS member country, no support documentation is required. Simply submit the license application. If your item is a firearms item (Reason for Control identified as “FC” on the Commerce Control List, Supplement No. 1 to part 774 of the EAR) destined for an OAS member country, proceed to § 748.14 of this part.

(1) All exports and reexports involving ultimate consignees located in any of the following destinations:

Bahamas	Haiti
Barbados	Honduras
Belize	Jamaica
Bermuda	Leeward and
Bolivia	Windward Islands
Brazil	Mexico
Canada	Miquelon and St.
Chile	Pierre Islands
Colombia	Netherlands Antilles
Costa Rica	Nicaragua
Dominican Republic	Panama
Ecuador	Paraguay
El Salvador	Peru
French West Indies	Surinam
French Guiana	Trinidad and Tobago
Greenland	Uruguay
Guatemala	Venezuela
Guyana	

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies). To determine whether the parties to your transaction meet the definition of “government agency” refer to the definition contained in part 772 of the EAR. Remember, if either the ultimate consignee or purchaser is not a foreign government or foreign government agency, a statement is required from the nongovernmental party. However, support documents are required from governments of the People’s Republic of China, India, Bulgaria, Czech Repub-

lic, Hungary, Poland, Romania, and Slovakia.

(3) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, for export to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibit, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (see part 754 of the EAR).

(6) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR.

(7) The license application is submitted to export or reexport software or technology.

(8) The license application is submitted to export or reexport encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002.

(b) *Support document requirements.* License applications not exempt under paragraph (a) of this section generally must be supported by documents designed to elicit information concerning the disposition of the items intended for export or reexport. These support documents must be either submitted at the time the license application is filed or retained in the applicant’s files in accordance with the recordkeeping provisions of part 762 of the EAR. The type of support documentation required is dependent on the item involved and the country of ultimate destination. To determine which type of support documentation is required, answer the following questions:

(1) Does your transaction involve items controlled for national security reasons?

(i) If yes, continue with question number 2 in paragraph (b)(2) of this section.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.)

Argentina	Korea, Republic of
Australia	Liechtenstein
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	New Zealand
China (PRC)	Norway
Czech Republic	Pakistan
Denmark	Poland
Finland	Portugal
France	Romania
Germany	Singapore
Greece	Slovakia
Hong Kong	Spain
Hungary	Sweden
India	Switzerland
Ireland, Republic of	Taiwan
Italy	Turkey
Japan	United Kingdom

(i) If yes, your transaction may require an Import or End-User Certificate. Note that if the destination is the People's Republic of China, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate under the following conditions:

(A) The item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at \$75,000 or less; or

(B) The End-User is not a Chinese entity.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(c) *License applications requiring support documents.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import or End-User Certificate must indicate the type of support document obtained in Block 6 or 7 on your application with an "X" in the appropriate box. If the support document is an Import or End User Certificate, you must also identify the originating country and number of the Certificate in Block 13 on your application. If a license application is submitted without either the correct Block or Box marked on the applica-

tion or the required support document, the license application will be immediately returned without action unless the satisfactory reasons for failing to obtain the document are supplied in Block 24 or in an attachment to your license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required by § 748.10(g) of this part, you may submit your license application upon receipt of a facsimile or other legible copy of the Import or End User Certificate provided that no shipment is made against any license issued based upon the Import or End User Certificate prior to receipt and retention of the original statement by the applicant. If § 748.10(g) of this part requires submission of the original certificate with your license application, you must submit the original. Copies will not be accepted.

(2) *License applications supported by Ultimate Consignee and Purchaser statements.* These types of license applications may be submitted upon receipt of a facsimile or other legible copy of the original statement provided that the applicant receives the manually-signed original within 60 days from the date the original is signed by the ultimate consignee.

(d) *Exceptions to obtaining the required support document.* BXA will consider the granting of an exception to the requirement for supporting document where the requirements cannot be met due to circumstances beyond your control. An exception will not be granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.12(d) of this part for specific instructions on procedures for requesting an exception.

(e) *Validity period.* (1) When an Import or End-User Certificate or a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, you must submit the first license application within the validity period shown on the Certificate, or 6 months from the date the Certificate was issued or Statement signed, whichever is shorter.

(2) All subsequent license applications supported by the same Import or End-Use Certificate must be submitted

to BXA within one year from the date that the first license application supported by the same Import or End-Use Certificate was submitted to BXA.

(3) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(f) *English translation requirements.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by you to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(g) *Responsibility for full disclosure.* (1) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BXA. The license application covering the transaction discloses all facts pertaining to the transaction. The authorizations contained in the resulting license are not extended by information contained in an Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser regarding reexport from the country of destination or any other facts relative to the transaction that are not reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject responsible parties to administrative action by BXA. Administrative action may include suspension, revocation, or denial of licensing privileges and denial of

other participation in exports from the United States.

(3) In obtaining the required support document, you as the applicant are not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use, end-user of which you know, even if inconsistent with the representations made in the Import Certificate, End-User Certificate, or Statement by Ultimate Consignee and Purchaser. You are responsible for promptly notifying BXA of any change in the facts contained in the support document that comes to your attention.

(h) *Effect on license application review.* BXA reserves the right in all respects to determine to what extent any license will be issued covering items for which an Import or End-User Certificate has been issued by a foreign government. BXA will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A supporting document issued by a foreign government will be only one of the factors upon which BXA will base its licensing action, since end-uses and other considerations are important factors in the decision making process.

(i) *Request for return of support documents submitted to BXA.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BXA in support of a license application, the procedure provided in this paragraph (i) should be followed:

(1) The applicant must send a letter request for return of an Import or End-User Certificate to the address stated in § 748.2(c) of this part, “Attn: Import/End-User Certificate Request”.

(2) The letter request must include the name and address of the importer, the Application Control Number under which the original Import or End-User Certificate was submitted, the Application Control Numbers for any subsequent license applications supported by the same certificate, and one of the following statements, if applicable:

(i) If the certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the certificate will not be used in connection with another license application.

(ii) If you do not intend to make any additional shipments under a license covered by the certificate, or are in possession of an expired license covered by the certificate, a statement to this effect, indicating the unshipped items.

(j) *Recordkeeping requirements for returning certificates retained by the applicant.* (1) Though the recordkeeping provisions of the EAR require that all original support documents be retained for a period of five years, an unused or partially used certificate may be returned at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, a copy of each license covered by the certificate, and a list of all shipments made against each license to BXA at the address listed in § 748.2(c). BXA will notify you in writing whether your request has been granted. The following information must be contained in your letter of explanation:

(i) A statement citing the foreign importer's request for return of the certificate;

(ii) The license number(s) that have been issued against the certificate (including both outstanding and expired licenses); and

(iii) If the certificate covers a quantity greater than the total quantity stated on the license(s), you must include a statement that the certificate will not be used in connection with another license application.

(2) If your request is granted, BXA will return the certificate to you. You must make a copy of the certificate before you return the original to the importer. This copy must show all the information contained on the original certificate including any notation made on the certificate by BXA. The copies must be retained on file along with your correspondence in accord-

ance with the recordkeeping provisions in part 762 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 64 FR 2431, Jan. 14, 1999; 64 FR 17973, Apr. 13, 1999]

§ 748.10 Import and End-User Certificates.

(a) *Scope.* There are a variety of Import and End-User Certificates currently in use by various governments. The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BXA. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import or End-User Certificate. This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part.

(b) *Import or End-User Certificate.* An Import or End-User Certificate must be obtained, unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002;

(2) The ultimate destination is a country listed in § 748.9(b)(2) of this part.

(3) Your transaction involves an export to the People's Republic of China (PRC) of a computer. You must obtain a PRC End-User Certificate, regardless of dollar value, as follows:

(i) For exports of computers as described by § 740.7(d)(5)(i)(A) or § 740.7(d)(5)(i)(B) of the EAR, regardless of value, to the People's Republic of China. (See paragraph (c) of this section for information on obtaining the PRC End-User Certificate.) Exporters are required to obtain a PRC End-User Certificate before exporting computers to the PRC. In addition, exporters are required to provide the PRC End-User Certificate Number to BXA as part of their post-shipment report (see